



Joseph R. Evanns  
EVANNS & WALSH  
119 N. San Vincente Blvd  
Suite 206  
Beverly Hills, CA 90211

In re Application of: :  
FRIEDHEIM, Max :  
U.S. Application No.: 10/528,084 : DECISION ON PETITION  
PCT No.: PCT/US05/08705 :  
International Filing Date: 15 March 2005 :  
Priority Date: 15 March 2004 :  
Attorney's Docket No.:1776-013 :  
For: IMPROVED HIGHLY SUPERHEATED :  
VAPOR GENERATOR SYSTEM AND :  
METHOD :

This decision is issued in response to the "Petition To The Director For Vacating And Withdrawing Erroneous Purported Notification Of Abandonment; Exhibits; Declaration Of Applicant's Attorney In Support Of Petition [37 CFR 1.181]" filed 12 July 2005. No petition fee is required.

### **BACKGROUND**

On 15 March 2005, applicant filed international application PCT/US05/08705 which claimed a priority date of 24 March 2005 and which designated the United States. The deadline for payment of the basic national fee with respect to the national stage in the United States is thirty months from the priority date, i.e., 15 September 2006.

On 15 March 2005, applicant also filed a "Transmittal Letter To The United States Designated/Elected Office (DO/EO/US) Concerning A Submission Under 35 U.S.C. 371" (Form PTO-1390) accompanied by a Power Of Attorney form. Based on applicant's use of the Form PTO-1390 (i.e., the transmittal letter applicable to national stage submissions under 35 U.S.C. 371), the USPTO initiated the present application file as a national stage of PCT/US05/08705.

On 11 April 2005, in the international application, the United States Receiving Office (RO/US) mailed an "Invitation To Correct Defects In The International Application" (Form PCT/RO/106) identifying defects in the international application.

On 11 May 2005, applicant filed what appears to be a response to the "Invitation To Correct Defects In The International Application." However, applicant submitted this response using a Form PTO-1390 national stage transmittal letter. Based on the use of the Form PTO-

1390, the 11 May 2005 submission was placed in the present national stage file, rather than the international application file.

On 13 June 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification of Abandonment" (Form PCT/DO/EO/903) in the present national stage application indicating that the application was abandoned for failure to pay the basic national fee within thirty months of the priority date.

On 12 July 2005, applicant filed the petition considered herein. The petition seeks withdrawal of the Notification Of Abandonment. It is noted that the Form PTO-1390 Transmittal Letter submitted with the present petition identified the application number for the petition as 60/553,576 (i.e., the provisional application that serves as the priority claim in the international application). However, because the petition requests withdrawal of the attached Notification Of Abandonment (which was issued in the present national stage application), the petition is treated herein.

### DISCUSSION

The deadline for payment of the basic national fee in the present national stage application is 15 September 2006, i.e., thirty months after the 15 March 2004 priority date claimed in international application PCT/US05/08705. More than one year remains before expiration of this deadline.

The Notification Of Abandonment (Form PCT/DO/EO/903) mailed herein on 23 June 2005, based as it was on applicant's purported failure to pay the basic national fee prior to this as-yet unexpired deadline, is therefore appropriately vacated.

### CONCLUSION

Applicant's petition is **GRANTED** to the extent that the Notification Of Abandonment (Form PCT/DO/EO/903) mailed on 23 June 2005 in national stage application number 10/528,084 is hereby **VACATED**.

A copy of the materials filed by applicant on 11 May 2005 in response to the "Invitation To Correct Defects In The International Application" (Form PCT/RO/106) issued in international application PCT/US05/08705 has been placed in the international application file.

Applicant is reminded that the Form PTO-1390 Transmittal Letter is for use in national stage submissions only. The Form PTO-1390 should not be used for filings intended for the international application.

The present national stage application is being returned to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision.

A handwritten signature in black ink, consisting of a series of loops and a final vertical stroke, representing the name Richard M. Ross.

Richard M. Ross  
PCT Petitions Attorney  
Office Of PCT Legal Administration  
Telephone: (571) 272-3296  
Facsimile: (571) 273-0459